

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
GARY FRIEDRICH ENTERPRISES, LLC, ET AL.,

Plaintiffs,

08-CV-01533 (BSJ)(JEH)

-against-

MARVEL ENTERPRISES, ET AL.,

Defendants.

**DECLARATION OF GARY
FRIEDRICH IN SUPPORT OF
PLAINTIFFS MOTION FOR
SUMMARY JUDGMENT**

DECLARATION OF GARY FRIEDRICH

I, Gary Friedrich, hereby declare under penalty of perjury as follows:

1. My name is Gary Friedrich, I am over the age of twenty-one, and I am one of the Plaintiffs in the above styled lawsuit.

2. I was born in Jackson, Missouri on August 21, 1943.

3. I am a resident of Arnold, Missouri, along with my wife Jean and family.

4. At a very young age, I was introduced to comic books and even learned to read from my father reading comic books to me.

5. As a young boy, watching "The Wild One" starring Marlon Brando and other motorcycle movies of the same genre put the initial idea of a motorcycle riding hero in my mind.

6. After graduating high school, I worked for a local record store for approximately 3 years, and then became managing editor of the Jackson Pioneer Newspaper where I was influenced to write from my mentor, Tom Stites.

7. While a teenager and young man, I watched motorcycle gang films starring the likes of Jack Nicholson, Dennis Hopper and Peter Fonda and, believed the black leathers of the

motor cycle clubs and gangs that were pictured (and were sprouting up in my home town), had a sense of cool power.

8. It was for that reason that I ultimately chose black leather to be the wardrobe for the character I was creating and eventually put into Marvel Spotlight, Vol. 1, No. 5 ("Spotlight 5")

9. In 1965, I moved to New York City, where I worked at a record store for a few months.

10. In early 1966, the editor of Charlton Comics agreed to pay me to write a script for a romance comic book on a freelance basis and liked it. Thereafter I continued to write free lance scripts for Charlton from time to time, on a script by script, basis. I also managed to obtain a part time job working with Topps Chewing Gum, where I wrote a series of Superman bubble gum cards and handled proofreading/editorial type tasks

11. In or around September, 1966, I left Topps for a staff position with a company that I knew as Magazine Management as an assistant to Stan Lee in the company's comic book operations (which were sold under the Marvel name at the time).

12. My responsibilities at the company were to do proofreading, some preliminary editing work on dialogue in comic books in production, entry level duties, answering fan mail and giving visiting kids tours of the office.

13. From time to time, in addition to and separate from my job duties, I was also asked by Stan Lee or Roy Thomas who was either an assistant or associate editor, if I would write an issue of a comic book for an existing "Marvel" title on a separate free lance, independent contractor basis, which I did on a comic by comic basis.

14. I was always paid separately, by separate check, for the free lance projects I agreed to write and that payment was separate from and in addition to the amounts I received for my staff job.

15. During the late 1960's, Evel Knievel, a real life motorcycle daredevil who would use his motorcycle to jump cars, canyons and other obstacles, began to rise to popularity.

16. The influence of Evel Knievel and other cycle stunt riders made me begin to evolve my contemplated character from a mere motorcyclist into a motorcycle stuntman, similar to Knievel.

17. Over these years, although far from an everyday project, I would continue to periodically think about my evolving character, including his physical attributes.

18. I continued to work on staff at the comic book company throughout 1967 and through the spring of 1968.

19. In 1968, my friend Paul Schade and I decided to go on a trip to California for the summer, so I quit the staff position.

20. While we were in California that summer, a high school friend of ours, C.L. Slinkard decided that he and his pregnant girlfriend would ride out from Missouri to California on his motorcycle to visit.

21. When Slinkard showed up on his motorcycle with his pregnant girlfriend on the back on a Triumph, his red hair coming out from his boney face, it instantly clicked to me that my character would have a skull for a head with flames around and coming out of it.

22. The addition of the flaming skull idea lead me to imagine my hero being a motorcycle stuntman by day in normal human form, but as being somehow connected to the devil at night when he would transform into the flaming skulled version of himself.

23. At the end of the summer of 1968, I returned to New York and approached Magazine Management, which was then owned by someone else, to get my staff position with the comic book people back but it had been filled. I did not rejoin the staff, but I did continue to write freelance comics from time to time on the same free lance, comic-by-comic, basis. Throughout 1968 and 1969 I would continue to develop my character and story, deciding my hero would have a love interest and had sold his soul to the devil for a noble purpose, and often telling David George, a long time friend of mine, about different aspects and characteristics.

24. In the summer of 1969, I got married and headed again to California.

25. After a few months, I returned to New York City, and David George, who was the editor of a non-comic book men's magazine for Magazine Management, hired me to an assistant position with the Men's Magazine.

26. While at the Men's Magazines department of Magazine Management, I did editorial work and wrote fiction and non-fiction stories for the Men's Magazine operations. I did not work at all with comics in that job, but was still separately writing comics for existing Marvel titles on the same as requested/as agreed free lance basis.

27. In the fall of 1970, I had a disagreement with an individual in upper management at Magazine Management, and as a result of writing certain memos to Magazine Management's then-publisher, I was let go from my position with the Men's Magazines. I was also told I could not continue freelancing for the comics division.

28. While I was out of work, Sol Brodsky, an old friend with whom I had discussed my evolving motorcycle hero character, asked me if I would write some comics on a free lance basis for Skywald Publications, which Brodsky co-owned.

29. Skywald was forming a line of adult comic books and Brodsky told me he remembered I had a motorcycle character.

30. I held back the complete concept of the superhero character, but in light of Brodsky's enthusiasm for a motorcycle character, did discuss a different type of motor cycle character with him, along the lines of a human vigilante character on a motorcycle.

31. I held back my evolving character because I was concerned about the publishing set up at Skywald and the quality of the artwork done in the Skywald publications, and so I did not want to risk my superhero and story on the Skywald venture.

32. I joined with Brodsky, Herschel Waldman, Ross Adru, and Mike Esposito in jointly creating a purely human motorcycle vigilante comic book character called "Hell-Rider" and retained my idea for the supernatural, stunt jumping, demon character for use at another time.

33. In early 1971, I learned that the comic book people at Magazine Management Co Inc. needed a mail clerk, and after apologizing to the company's publisher for my prior actions, I was hired for that position.

34. My mail clerk job required me to go through all the fan mail, read the letters, sort them out in separate stacks related to each series and then pick out letters which might be suitable for printing in the letter pages of the comics.

35. I was once again able to write comics for existing Marvel titles for Magazine Management on a free lance basis, again separate and apart from my staff position, and was requested to, and did, do so on the same as requested/as agreed, free lance basis from time to time.

36. In 1971, I learned that the Comics Code Authority (CCA) was beginning to lighten up its standards for certain areas of comics, which I recognized would now allow me to go forward with my character and story when I decided it was ready.

37. With the CCA changes, the code began to allow more adult oriented content to be included in comic books including demons and supernatural elements that had been previously been restricted.

38. As a result of the change in the comic's code, I determined that it was time to try to launch my character and its origin story. I began to focus on the characters and story for the first time with a serious thought that I could publish and sell an actual comic book telling the story. Just before putting pen to paper, and after rejecting the idea of having my hero sell his soul to the devil to save the love of his life as being too cliché, I decided instead that he would sell his soul to save her father. I decided that the stuntman would be named Johnny Blaze and that he would be an orphan being raised by the father of the girl that he loved, who he would then save. I also decided that Blaze would be somehow following in the footsteps of his adoptive father as a stuntman, and would be physically fit, tall, blonde, wholesome, and attractive, and an antithesis to the supernatural hellish persona I decided would be called Ghost Rider.

39. With the look of my hero's human and supernatural personas and the general framework of my story in place I sat down and formalized my characters and story in writing, at home, on my own time and at my own expense. I created the characters of Blaze's deceased father (naming him Barton merely for the alliteration) and the separate father figure he would save to join (naming him "Crash" due to his stuntman career) and described them along with Johnny Blaze/Ghost Rider and Johnny's love interest Roxanne, and fleshed out the story in a

detailed written synopsis. The synopsis detailed my characters characteristics and how they would look, and the story of Johnny Blaze's deal with the devil and resulting cursed existence, specifically making the selling of the soul to be for the benefit of Crash Simpson.

40. When I completed it, the detailed written synopsis provided a full description of storyline, character names, description of the characters including Ghost Rider, Johnny Blaze, Roxanne Simpson, Barton Blaze, and Crash Simpson, as well as key action panels that would be in the comic book itself. The name of Johnny Blaze was inspired by his alter ego's flaming skull and Roxanne was named after a lead guitarist in a band I had played in the 60's.

41. The entire expense of creating the storyline and the creation and development of the characters was borne by me in the years and months prior to my creation of the synopsis, and the cost and expense of preparing the written synopsis was also borne by me.

42. I paid for the materials to write out the written synopsis.

43. I received no payment for the time it took to write out the synopsis.

44. I received no payments for the development of my ideas, the storyline or the characters.

45. After completing the synopsis, I approached Magazine Management through Roy Thomas with a proposal that I write a comic book featuring by new hero and that MMC publish it. I described my new hero, related characters and origin story, and presented Thomas with my written synopsis that described the developed characters and story as well.

46. Thomas agreed that my new characters and origin story sounded like a viable storyline and characters but indicated a meeting with Stan Lee, who still headed up the Marvel division of MMC at the time, would be necessary if I wanted MMC to publish my book.

47. Thomas told me he was going to set up a meeting with Lee and give my written synopsis to him and I believe Lee received my written synopsis from Thomas prior to my meeting with Lee.

48. Thomas set up the meeting between Lee and me. In the meeting I described my motorcycle riding Johnny Blaze/Ghost Rider human/supernatural character and the characters of Roxanne Simpson, Crash Simpson, and Barton Blaze and the origin story and plot, and my background on what the characters would look like, including Ghost Rider's flaming skull and black leather suit.

49. At the meeting, Lee listened to me and agreed that MMC would go forward with the project that I initiated, and agreed that MMC would publish the comic book that I would write.

50. In that discussion, I proposed that I would give MMC the copyrights to the story and characters for use in the comic book and other comic books in a Ghost Rider line so they could publish it. We did not discuss "renewal rights" and I did not even hear of anything called renewal copyrights until 2005 or 2006.

51. Thomas suggested to me in that meeting that Mike Ploog be brought in to illustrate the comic book, and I agreed, believing that Ploog would be the best choice because of my main character's supernatural aspects.

52. Following the meeting, I met with Ploog and ensured that he received my previously prepared written synopsis detailing the story, the look of the characters and the key panels that would need to be drawn.

53. I also spoke with Ploog and gave him additional instructions, and he was instructed what the characters were to look like in specific detail, how they are to drawn and what should be drawn in the key panels.

54. Ploog converted my prior decisions as to what the characters and the key panels would look like into actual pictorial form, pursuant to my written synopsis and my specific express instruction.

55. Around this time, I quit my mailroom staff position and my then wife and I moved back to Missouri as a result of a brutal murder upstairs from my apartment which badly frightened my wife.

56. Thereafter, although living in Missouri, I continued to work on and supervise the comic book project that became known as Spotlight No. 5.

57. When it came time to design the cover for Spotlight No. 5, I described what the cover page for Spotlight No. 5 should look like, and discussed it with Ploog, and he drew up a sketch for the cover of Spotlight 5, and I approved that sketch.

58. After the final work was done on Spotlight 5, the pages were returned to me, and I added the “credit box” to the splash page in which I noted that Spotlight 5 had been “conceived and written by” me.

59. Thomas saw that credit for me and never took issue with it. He merely added a credit for himself, indicating he had aided and abetted me. I initially contemplated removing the credit that he had added, but eventually approved it due to his role in setting up the meeting with Lee.

60. I believe that Stan Lee also saw the credit given to me, and he also never took issue with it.

61. I then proof read Spotlight 5 for final approval prior to the comic being sent for publication.

62. In or around April, 1972, Magazine Management published and distributed Spotlight 5, which had been created at my suggestion, instigation and request, and which I had created by turning my previously created characters and origin story and related characters into comic book dialogue and pictures. Magazine Management published it with the credit to me for having conceived and written Spotlight 5 on the comic book's splash page.

63. At the time that I created the characters and Spotlight 5, it was not within the scope of any employment with any company including Magazine Management, and nothing in my employment with Magazine Management required me to provide it with an opportunity to publish comic books featuring original characters or stories created by me on my own time and without any request from Magazine Management.

64. I did not have comic book writing responsibilities as part of my staff position as a mail clerk at the time of Spotlight 5 or as part of any staff position with Magazine Management or any Marvel company at any time.

65. While working with Magazine Management or any other Marvel company, I was not required to accept any assignment to write any comic books and I was never by Magazine Management or any other Marvel Company to create a new central character for a comic book to revolve around.

66. The Spotlight 5 project and the conversion of the Ghost Rider Characters and story into a comic book was not undertaken as part of any request from Magazine Management, was not specially ordered or commissioned by Magazine Management, and rather was solely commissioned and initiated by me.

67. At the time of Spotlight 5, I had no written agreement with Magazine Management in any respect, and the fact that I periodically agreed to write comic books for Magazine Management on an as requested, free lance basis, did not require me to provide Magazine Management with the opportunity to publish comic books featuring original characters and stories created by me on my own time and without any request from Magazine Management.

68. The expense of my direction of Ploog to implement my conceived comic book panel illustrations was borne by me (including the proofreading of the book, editing of the book, and oversight of the project), as were my mail expenses of sending materials back and forth from Missouri.

69. I continued to freelance for Magazine Management for several more years until I finally stopped working in the comic industry.

70. I was not aware of any discussions concerning a potential movie concerning Spotlight 5 until sometime in 2004, after which I contacted an attorney.

71. I was not aware of any toys, video games or other related merchandise until around the time that the movie was going to be released, in late 2006 and early 2007.

72. On or about March 29, 2007, I assigned any and all of my intellectual property rights in various works, including Spotlight No. 5, and all my accrued claims for infringement of those rights, to Gary Friedrich Enterprises, LLC. The document bates numbered GF00007-000010 is an accurate copy of the agreement by which I did so.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on October 17, 2011, in Arnold, Missouri.



Gary Friedrich